NO. 88-620

Supreme Court, U.S.
FILED
SEP 8 1988
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CLERK

In the Supreme Court of the United States

OCTOBER TERM 1987

BADDOUR, INC.,

Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

VOLUME I

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APPENDIX "A"

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

BADDOUR, INC.,
Respondent,

No. 86-6224

United States Court of Appeals,
Sixth Circuit
August 15, 1988

ORDER

BEFORE: NELSON and NORRIS, Circuit Judges and SPIEGEL*, United States District Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having

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*Hon. S. Arthur Spiegel sitting by designation from the Southern District of Ohio.

requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/Leonard Green
LEONARD GREEN, Clerk

APPENDIX "B"

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

BADDOUR, INC.,
RESPONDENT

No. 86-6224

United States Court of Appeals,
Sixth Circuit
May 19, 1988

ON PETITION FOR ENFORCEMENT
OF AN ORDER FROM THE
NATIONAL LABOR RELATIONS BOARD

BEFORE: NELSON and MORRIS, Circuit Judges; and SPIEGEL, District Judge.*

PER CURIAM. The National Labor Relations Board ("the Board") petitions for enforcement of its order finding that respondent, Baddour, Inc., violated subsections 8(a)(1), (3) and (4) of the

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*Hon. S. Arthur Spiegel sitting by designation from the Southern District of Ohio.

National Labor Relations Act ("the Act"), 29 U.S.C. §158(a)(1), (3), (4), by coercively interrogating its employees; by maintaining and giving effect to an invalid no solicitation/no-distribution rule; by discharging, demoting, warning or otherwise disciplining employees engaged in protected, concerted activities; and by causing the cessation of an employee's workers' compensation benefits. The Board's order required Baddour to cease and desist its unfair labor practices, to reinstate and make whole employees who were unlawfully discharged or otherwise disciplined, to preserve and make available for inspection certain business records, and to post a notice. The order also set aside an election and ordered a new

election; however, that portion of the order is not before this court.

Baddour requests this court to deny enforcement of the order and dismiss the complaint, or remand the case for a new hearing. It asserts that there was insufficient evidence to find it in violation of the Act, and that the administration law judge was biased, with the result that Baddour was denied due process of law.

This matter arises from attempts by Local 667 of the Teamsters Union to organize certain employees of Baddour's Memphis, Tennessee facility. Between the September 1982 filing date of the election petition and the February 1983 hearing date, numerous unfair labor practice complaints were filed by the

union against Baddour. These cases were consolidated and were heard by an administrative law judge who found that Baddour had engaged in unfair labor practices in violation of subsections 8(a)(1), (3) and (4) of the Act and recommended that Baddour take corrective action regarding certain employees. Baddour filed exceptions to this decision with the Board, primarily arguing that the A.L.J. exhibited extreme bias against it during the hearing. On September 26, 1986, the Board issued its order, reported at 281 N.L.R.B. No. 84. The Board subsequently adopted the A.L.J.'s decision, finding that certain actions of Baddour had indeed violated subsections 8(a)(1), (3) and (4) of the Act, but that others did not. This petition for enforcement followed.

A reviewing court must uphold and enforce the decision of the Board when substantial evidence on the record as a whole supports its findings, even though it might justifiably have made a different choice had the matter been before it de novo. Universal Camera Corp. v. NLRB, 340 U.S. 474, 488 (1951); NLRB v. Okum Bros. Shoe Store, Inc., 825 F.2d 102, 105 (6th Cir. 1987), cert. denied, 108 S.Ct. 1109 (1988).

Baddour contends that the A.L.J. exhibited bias by harassing and intimidating its witnesses; by making inconsistent evidentiary rulings favoring the general counsel; by flippantly commenting upon the testimony of company witnesses; and by banning one of its attorneys from the hearing, and threatening its lead counsel with

expulsion, for their continuous objections.

We have carefully reviewed the briefs and record in this case and agree with the conclusion of the Board, made after serious consideration of the allegations, see 281 N.L.R.B. No. 84 at 1, n.2, that each of these assertions is without merit. While we do not altogether approve of the manner in which the A.L.J. conducted the hearing, his indiscretions did not amount to a due process violation. A review of the transcript discloses that this was a bitterly contested case before the A.L.J. and that he did a good deal of probing in an effort to obtain the truth. Friction developed between the A.L.J. and counsel for Baddour. However, an A.L.J. possesses wide latitude in the conduct of

the hearings before him regarding direct and cross-examination, the handling of objections, and arguments of counsel. 29 C.F.R. §§102.35, 102.64(a) (1987); see, e.g., NLRB v. Overseas Motors, Inc., 818 F.2d 617, 520 (6th Cir. 1987) (A.L.J. can interrupt or question witness to clarify testimony). We find no evidence that Baddour was deprived of a fair hearing, and are not persuaded that it was deprived of due process.

Baddour also argued that the alleged bias of the A.L.J. so tainted his judgment that the credibility resolutions he made against Baddour should not stand. Credibility determinations "will be upheld if they are `reasonable,' or if they have a `rational basis.'" NLRB v. Garon, 738 F.2d 140, 142 (6th Cir. 1984) (citations omitted). It is clear from

its opinion that the Board did not simply accept the A.L.J.'s findings, but made a thorough evaluation of evidence presented at the hearing. Although it rejected several of the findings of the A.L.J. of unfair labor practices by Baddour, the Board agreed that certain actions taken by Baddour violated subsections 8(a)(1), (3) and (4) of the Act. We conclude that there was substantial evidence on the record as a whole to support the Board's finding that Baddour had violated the Act.

Accordingly, we grant enforcement of the Board's order.

APPENDIX "C"

JBS

281 NLRB No. 84

D--4009
Memphis, TN

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BADDOUR, INC.

and

HIGHWAY AND LOCAL MOTOR FREIGHT EMPLOYEES, LOCAL 667, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	Cases 26-CA-9846 26-CA-9957 26-CA-6527[1]
ELTON HILL, an Individual	Case 26-CA-9997
JERRY LEONARD WILLIAMS, an Individual	Case 26-CA-10121

DECISION, ORDER, AND DIRECTION
OF SECOND ELECTION

1/ This case number appears as corrected.

On 11 October 1983 Administrative Law Judge George Norman issued the attached decision. The Respondent and the General Counsel filed exceptions and a supporting brief, and the General Counsel filed a brief in response to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[2] findings,[3] and

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[2]/ The Respondent excepts to the judge's failure to grant its motions to strike testimony and reject evidence, and to reopen the record. The Respondent also excepts to the judge's granting of the General Counsel's motions to correct the transcripts and to consolidate cases for hearing. We find no merit in these exceptions.

The Respondent was represented at hearing by counsel William E. Hester III

and Theresa Gallion. On 20 April 1983 after 10 days of hearing, the judge limited Gallion's participation in the cases to assisting Hester at counsel's table. On 1 July 183, the Respondent requested that the judge withdraw from these cases, contending he was biased, based on certain evidentiary rulings by the judge, his "excessive" questioning of the Respondent's witnesses, his alleged unprofessional conduct, and his threats to exclude the Respondent counsel from the hearing and the ultimate "exclusion" of Gallion. In his decision, the judge denied the Respondent's motion as without merit. The Respondent excepts to this denial and asserts that the judge's rulings and decision are the result of bias. After a careful review of the record, we are satisfied that the judge's evidentiary rulings did not prejudice the Respondent's presentation of evidence. We are also satisfied that the judge's conduct at hearing was consistent with his obligation to develop a full record and that certain of his remarks, while unwise, did not evidence bias. Furthermore, we find that the judge's decision to limit the participation of Gallion was not an abuse of his discretion and authority under Sec. 102.35 and 102.44(a) of the Board's Rules. The record reveals that on the 6th through 10th days of hearing, the judge repeatedly warned both counsel for the Respondent about arguing after his evidentiary rulings, objecting to questions that the judge previously had ruled were proper, needlessly

interrupting the testimony of witnesses, and making unnecessary statements on the record. These warnings included specific cautions that such conduct would lead to exclusion of counsel. On the 10th day of the hearing, during direct examination of witness Gatlin, the judge and counsel Gallion engaged in an extended colloquy on the record during which the judge repeatedly asked Gallion to cease arguing the point in issue and to remain quiet. Gallion persisted despite the judge's instructions. Following a brief recess, the judge ordered Gallion excluded in the interests of order, given her failure to heed his warnings. In further discussion, the judge noted that Gallion had acted contemptuously, but on request of cocounsel the judge modified his ruling to allow Gallion to remain in the hearing room and assist at counsel's table. The judge also excused witness Gatlin until Hester was prepared to resume the direct examination. The Respondent contends that Gallion should not have been excluded as her conduct was respectful and in furtherance of its interests as her client. While we are sensitive to the important role of the attorney-advocate in the administration of justice, we are equally attuned to the interest furthered by the orderly development of issues and evidence in hearing. We note as did the judge, that the Respondent's interests were adequately protected by the judge's willingness to grant the Respondent continuing objections to lines of inquiry considered improper by the Respondent. We

conclusions and to adopt the recommended Order as modified.[4]

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find no merit in the Respondent's contention that counsel's repeated objections and argument after adverse rulings were warranted. We conclude under all the circumstances that the judge's ruling limiting Gallion's participation in the hearing was not improper.

[3]/ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Standard Dry Wall Products, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4]/ The Respondent's request for permission to incorporate by reference its brief to the judge in its brief to the Board is denied, inasmuch as it would result in the Respondent's brief being in excess of the 50-page limitation prescribed by the Board's Rules and Regulations.

Subsequent to the issuance of his decision, the judge issued an Erratum in which he amended his recommended Order to provide that the 29 October 1982 election

We agree with the judge that the Respondent violated Section 8(a)(3) by transferring employee Jerry (Lowell) Williams prior to the election from his cart control position, in which he had virtually unlimited access to all warehouse areas, to a consolidator position, in which he was limited to one specific area of the facility. In so doing, we note that the Respondent did not adequately explain its decision to transfer Williams, who had no experience as a consolidator, in light of the fact

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be set aside and a new election be directed. Thereafter, the Union filed with the Board a "Motion for Erratum and Further Specified Relief" in which it urged, inter alia, that the election be set aside, and the Respondent filed a motion to strike the Union's motion. In view of the judge's issuance of his Erratum and our decision here, we find it unnecessary to pass on the Union's and the Respondent's motions.

that experienced temporary employees were available, and it failed to replace Williams when he injured his hand shortly after the transfer, even though the injury rendered him unable to perform consolidator duties. We further note that the transfer of Williams is distinguishable from that of employee Hill, discussed below, in that with respect to Hill the General Counsel alleged but failed to establish that Hill's transfer resulted in more onerous working conditions.

We agree with the judge that the Respondent violated Section 8(a)(4) by causing the stoppage of Williams' workmen's compensation. At the hearing Williams testified that he had used his brother Lowell's application in obtaining his job. We note in particular that

Williams informed Supervisor Eason Camp in February 1981 that he was Jerry, and not Lowell, Williams. Although thereafter Williams' social security number was changed in the Respondent's personnel records, Camp encouraged him to retain use of the name "Lowell" around the warehouse. Thus the Respondent is, at least in part, responsible for the continued reference to Williams as "Lowell." Moreover, it was the Respondent's counsel, at the hearing, who introduced the question of Williams' real name when he attempted to impeach Williams' credibility by inducing him to admit that he was not "Lowell" Williams, as he had previously testified. Thus the Respondent's assertion that it had no knowledge of Williams' "true" identity

until after he testified is dubious at best.

We thus reject the Respondent's contention that it informed the insurance company of Williams' identity directly after his testimony only because of its newly perceived obligation to do so. We also find that the Respondent is not exonerated by virtue of the "request" for continuation of Williams' benefits made to the insurance company by Fred Stearns, the Respondent's personnel manager. Stearns could not reasonably have expected favorable consideration of such a request when coupled with a report that the insurance company had been paying benefits to the wrong person, particularly since Stearns failed to qualify his report with an assurance that Williams had reported his true name to

the Respondent. In these circumstances, and given the Respondent's other acts of discrimination against Williams, we conclude that the request for continuation was disingenuous at best and that the Respondent was in fact acting in retaliation against Williams for his testimony at the Board hearing.

While we agree with the judge that the Respondent's maintenance of its no-solicitation/no-distribution rule violated Section 8(a)(1) of the Act, we do so for the following reasons.

The rule set forth in the Respondent's employee handbook reads as follows:

> To avoid interruption of work and complications and distractions in our operations, employees are not permitted to sell anything, distribute or post literature or other matter, make speeches or collections, or engage in any kind of solicitation during their working

> time, or in any way to interfere with the work of other employees.

Clearly, to the extent that the Respondent's rule prohibits employees from engag[ing] in any kind of solicitation during their working time"[5] that aspect of the rule is valid on its face under the Board's decision in Our Way, 268 NLRB 394 (1983). The rule, however, also states that "employees are not permitted to sell anything, distribute or post literature or other matter, make speeches or collections," and, in our view, is ambiguous because the qualification "during working time" could reasonably be read as modifying only the proscription on solicitation.

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[5]/ The Respondent, in its personnel manual, subsequently changed this phrase to read "during the time they are supposed to be working." This change, however, does not affect our decision.

Interpretation of the rule is further complicated by the fact that the Respondent's clarification, issued in November 1981 in response to the Board's decision in T.R.W., Inc., 257 NLRB 442 (1981),[6] refers only to solicitation, making no mention of distribution or the other activities enumerated above. Thus both the rule and its "clarification" could be read as a blanket prohibition on these activities, leaving only solicitation during nonworking time as a permissible practice. Accordingly because ambiguous language in work rules is construed

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[6]/ We note that the Respondent's reliance on T.R.W., which was subsequently overruled in Our Way, resulted in no prejudice to the Respondent since the latter case increased the General Counsel's burden of establishing a violation.

against the promulgator of the rule, see, e.g., J.C. Penney Co., 266 NLRB 1223, 1224 (1983), we find that the Respondent's rule, insofar as it may be read as an overall prohibition on distribution of any kind, violates Section 8(a)(1) of the Act.

The judge further found that the Respondent violated Section 8(a)(3) and (1) of the Act by transferring employee Elton Hill to a more onerous position because of his union activity. We find merit in the Respondent's exceptions to this finding.

Hill was employed as a forklift driver in unit 1 of the Respondent's warehouse. Hill's duties in unit 1 included forklift driving and material handling, because unit 1 had no regularly assigned material handler. Approximately

1 week before the election, which was conducted on 29 October 1982, Hill began to wear union buttons at work. On 29 October Hill was transferred from unit 1, which was close to the polling site, to unit 3. During the first week after his transfer, Hill performed exclusively as a forklift driver, although thereafter he worked primarily as a material handler. Material handling involved manually unloading merchandise from delivery trucks and stacking it on pallets for removal by forklift operators. In unit 3, Hill also substituted for the forklift drivers in their absence.

Hill specifically testified that there was nothing less desirable or more difficult about the work he was required to perform in unit 3 as opposed to his assignments on unit 1, and the evidence

does not establish that the unit 3 work was more physically demanding. When asked what job he preferred, Hill testified that he preferred the unit 1 job, although as a basis for this preference he cited only alleged "harassment" by the unit 3 supervisor, rather than the physical aspects of the job. In this regard, Hill indicated that after his transfer to unit 3, he was closely watched by his supervisor and told that he could no longer punch in at 7 a.m., but had to punch the timeclock between 6:55 and his 7 a.m. starting time. While the timekeeping procedures in unit 3 may have been different from those in unit 1, however, there is no evidence that Hill was subjected to significantly closer supervision or stricter timekeeping procedures than other unit 3 employees.

The judge found that Hill's work in unit 3 was more onerous. In reaching this conclusion the judge relied on his finding that Hill's material handling duties in unit 3 were more physically demanding than his work in unit 1 and on the alleged "harassment" of Hill by his supervisor. Relying on the Respondent's failure to explain the reason for Hill's transfer, the judge concluded that Hill's wearing of union buttons, and the proximity of Hill's unit 1 work station to the election polling site, caused the Respondent to move Hill into the more onerous position in unit 3.[7]

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[7]/ We note that the complaint does not allege that the Respondent discriminatorily transferred Hill in order to remove him from the polling area.

Contrary to the judge, we find that the General Counsel has failed to establish that Hill's duties in unit 3 were more onerous than his duties in unit 1. We note in particular that during his first week in unit 3, Hill performed the same duties he had performed in unit 1, i.e., forklift driving, and that he continued to substitute for absent drivers thereafter. We further note that Hill's duties in unit 1 had often required him to act as a material handler. Thus, while Hill's unit 3 assignments entailed more material handling, the objective evidence and Hill's own evaluation of the work do not demonstrate that they were more onerous than his duties in unit 1.

Moreover, Hill's allegations of "harassment" by his unit 3 supervisor are

not supported by the record. Accordingly, we conclude that the General Counsel has not met its burden of establishing that Hill's working conditions in unit 3 were more onerous than the working conditions in unit 1. Therefore, we shall dismiss this allegation of the complaint.

The judge found that "statements" made by the Respondent's president Paul Baddour during preelection speeches to employees had a coercive effect on employees and violated Section 8(a)(1) of the Act. In his discussion of the speeches, the judge referred to several statements attributed to Baddour, but did not specify which of these statements were unlawful. Because the complaint alleges a violation only with respect to Baddour's statement that the Company is no place for employees who want a union,

we find that this statement alone violated Section 8(a)(1), and we do not pass on the lawfulness of other statements Baddour may have made.

We agree with the judge that the Respondent violated Section 8(a)(1) of the Act through Supervisor Charles Smith's interrogation of employee Britton. We disagree, however, with the judge's conclusion that Smith's offer of assistance to Britton constituted a solicitation of grievances in violation of the Act. We note that Smith's offer of assistance was made following his inquiry as to how Britton's daughter was doing. Thus, it appears in context that Smith's statement was an offer of personal assistance and not a solicitation of work-related grievances.

Further, while we agree that the Respondent violated Section 8(a)(1) through its security guards' recording the automobile license numbers of union supporters, we find that the guards' observation of employees handbilling at the gate to the Respondent's premises, an area open to public view, was neither unlawful nor objectionable. In so finding, we distinguish those incidents during which the guards were merely observing the handbilling from those incidents during which they were unlawfully recording license numbers. See generally Hoschton Garment Co., 279 NLRB No. 81 (Apr. 28, 1986).

We also agree with the judge's conclusion that the Respondent violated Section 8(a)(1) of the Act through Supervisor Shelley Smith's remarks to

employee Patrick Amsden. In so doing we note that Smith's comments about the Union were accompanied by a threat to discharge Amsden if he did not stop "talking the union up."

While we agree with the judge that Supervisor Tarver unlawfully interrogated and threatened employee Love, we note that, generally, a supervisor may lawfully express his or her personal views of or experience with unionism. Here, however, although some of Tarver's statements arguably constituted his personal views, the overall context of Tarver's remarks, in our view, is coercive and, accordingly, we find Tarver's conversation with Love to be violative of the Act. Thus, Tarver called Love, who was not shown to be an open or active union adherent, into his office

and began discussing certain personnel matters with him. When Tarver's comments turned to the Union, his "opinions" on unions were accompanied by interrogation as the Respondent's employees' reasons for wanting a union and thinly veiled threats concerning the consequences of unionization at the Respondent.[8]

In agreeing with the judge that the Respondent unlawfully discharged employee David Cordray, we note that the judge credited Cordray's testimony the extent it conflicted with McCollum's testimony. Moreover, even assuming the alleged remark was made by Cordray, we rely on the evidence of disparate treatment of

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[8]/ In agreeing with his colleagues that Tarver's statements violated Section 8(a)(1), Member Stephens relies on the overall context of the campaign and the Respondent's other unfair labor practices.

Cordray and find it unnecessary to pass on the remainder of the judge's rationale.

ORDER

The National Labor Relations Board orders that the Respondent, Baddour, Inc., Memphis, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or giving effect to the invalid no-solicitation/no-distribution rule.

(b) Telling employees that there is no place in the Company for employees who want a union.

(c) Interrogating its employees concerning their protected concerted activities for their mutual aid and protection.

(d) Demoting, warning, or otherwise disciplining employees because they have engaged in union activities or testified before the Board.

(e) Surveiling or creating the impression of surveillance of employees' union activities.

(f) Discharging employees because they have engaged in protected concerted activities with other employees for their mutual aid and protection.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the Policies of the Act.

(a) Offer Larry Mayes, David Cordray, Patrick Amsden, and Jerry Williams immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits, including loss of workmen's compensation pay, suffered as a result of their termination or demotion in the manner set forth in the remedy section of the judge's decision.

(b) Remove from its records any reference to the unlawful discharges, demotions, or warnings of its employees Larry Mayes, David Cordray, Patrick Amsden, and Jerry Williams, and notify them in writing that this has been done

and that evidence of this unlawful conduct will not be used as a basis for future discipline against them.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its offices and places of business in Memphis, Tennessee, copies of the attached notice marked "Appendix."[9]

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[9]/ If this Order is enforced by a Judgment of a United States court of appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election held on 29 October 1982 in Case

26-RC-6527 is set aside and that a new election be conducted.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date

and who retained their employee status during the eligibility period and their replacements. Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by Highway and Local Motor Freight Employees, Local 667, affiliated with International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers of America.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. The Regional Director shall make the list available to all parties to the election. No extension of time to

file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C. 26 September 1986.

Wilford W. Johansen, Member

Marshall B. Babson, Member

James M. Stephens, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT terminate, demote, give warnings to, or otherwise discriminate against our employees because of their membership in or because they engage in activities on behalf of the Union or gave testimony before the Board.

WE WILL NOT tell employees that there is no place in the Company for employees who want a union.

WE WILL NOT engage in surveillance or give the impression of surveillance of our employees' union activities.

WE WILL NOT question our employees concerning their union activities, including attendance at union meetings.

WE WILL NOT question employees concerning their sympathy for, and activities on behalf of, Highway and Local Motor Freight Employees, Local 667, affiliated with International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

WE WILL NOT give any force or effect to the no-solicitation/no-distribution rule printed in our employee handbook and employee manual.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Larry Mayes, David Cordray, Patrick Amsden, and Jerry Williams, immediate and full reinstatement to, their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole with interest for any loss of earnings and other benefits including loss of workmen's compensation pay resulting from our unlawful discrimination against them.

WE WILL notify each of them that we have removed from our files any reference to his discharge, demotion, or warning and that the discharge, demotion, or warning will not be used against them in any way.

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BADDOUR, INC.

(Employer)

Dated --- By----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Mid-Memphis Tower Building, Suite 800, 1407 Union Avenue, P.O. Box 41559, Memphis, Tennessee 38104, Telephone 901-521-2687.

other benefits including loss of workmen's compensation pay resulting from our unlawful discrimination against them.

WE WILL notify each of them that we have removed from our files any reference to his discharge, demotion, or warning and that the discharge, demotion, or warning will not be used against them in any way.

BADDOUR, INC.

(Employer)

Dated --- By----------
(Representative) (Title)

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questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Mid-Memphis Tower Building, Suite 800, 1407 Union Avenue, P.O. Box 41559, Memphis, Tennessee 38104, Telephone 901-521-2687.